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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,145	09/11/2003	L. Harrison Bernbaum	29864/38509	4979

4743 7590 06/13/2005

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,145

Applicant(s)

BERNBAUM ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 7-9 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Claims 16-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.
2. Claims 1-4, 10-12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiderman (792183) in view of Rekuc et al. (5435423). Tiderman teaches a soft-sided carrying case comprising a primary compartment defined by the interior of portion 15, the primary compartment including a plurality of sidewalls, a top wall (it is noted that applicant defines the top wall broadly, i.e., the top wall comprises the narrow portions 12 f surrounding at least a portion of the top. In this case, Tiderman teaches a top narrow portion above portion 5) and a bottom wall, a first one of the sidewalls and a second one of the sidewalls each formed of a flexible fabric material including an extended portion, a first upper compartment defined by the interior of portion 15, the first upper compartment having a plurality of sidewalls, a top wall, and a bottom wall, one of the sidewalls of the first upper compartment being formed of the same contiguous piece of flexible fabric material as the first sidewall of the primary compartment, the sidewall of the first upper compartment and the first sidewall of the primary compartment defining a first hinge line generally adjacent to an interface defined between the primary compartment and the first upper compartment, the first hinge line permitting the first upper compartment to pivot about the first hinge line between a folded position and an unfolded position; and a second upper compartment, the second upper compartment having a plurality of sidewalls, a top wall, and a bottom wall, one of the sidewalls of the second upper compartment being formed of the same contiguous piece of flexible fabric material as the second sidewall of the primary compartment (see drawing below and note the compartments being formed of the

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same contiguous piece of the outer layer), the sidewall of the second upper compartment and the first sidewall of the primary compartment defining a second hinge line generally adjacent to an interface defined between the primary compartment and the second upper compartment, the second hinge line permitting the second upper compartment to pivot about the second hinge line between a folded position and an unfolded position. Tiderman meets all claimed limitations except for the carrying case including a pair of wheels and an extendable handle.

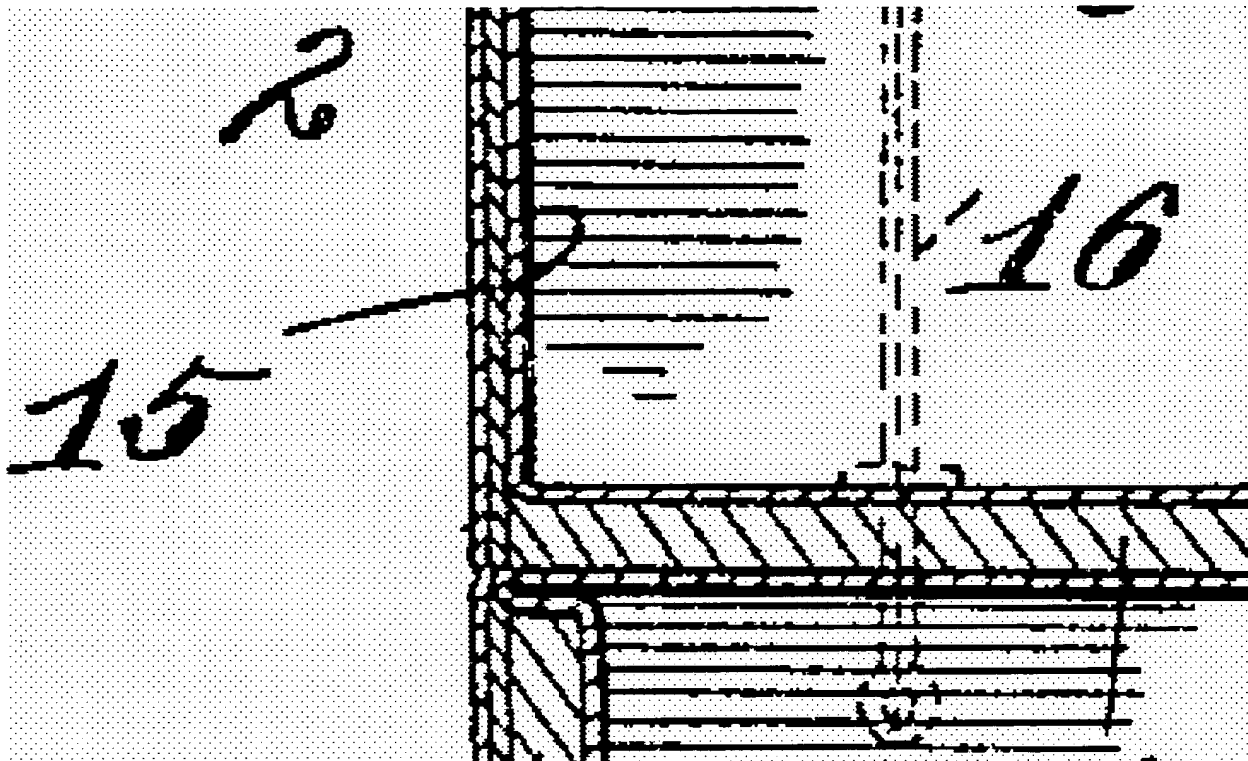
Tiderman teaches the material can be made from leather (col. 1, ln. 40), and leather is a type of fabric, see infomat.com. To the degree it is argued that leather is not fabric, it would have been obvious to one of ordinary skill in the art to provide fabric since fabric and leather are well known equivalents in the art.

Rekuc teaches that it is known in the art to provide a luggage with a wheels and an extendable handle. It would have been obvious to one of ordinary skill in the art to provide wheels and an extendable handle in Tiderman as taught by Rekuc to move the luggage easily.

Regarding claims 3-4, note the straps 23 in Tiderman.

Regarding claim 15, it would have been obvious to one of ordinary skill in the art to eliminate the hinges 16 to have the hinge exclusive provided by the extensions of the sidewalls. since it is obvious for one of ordinary skill in this art to eliminate the extra hinge when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969).

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3. Claims 1-6, and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Tiderman rejection as set forth above, and further in view of Christie.

Regarding claims 1 and 10, to the degree it is argued that Tiderman does not teach a top wall. Christie teaches that it is known in the art to provide a top wall being a closure flap. It would have been obvious to one of ordinary skill in the art to provide a top wall being the closure flap in Tiderman as taught by Christie to provide added protection to the contents.

4. Claims 7-9 are allowed.

5. Applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that Tiderman fails to teach the fabric hinge. It is noted that the term "fabric" is broad. It is noted that the outer cover of Tiderman is made from leather (col. 1, ln. 40), and leather is a

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fabric. Note the definition from infomat.com. Furthermore, note the Finkelstein reference (1802912) which teaches "leather fabric" pg. 3, ln. 49.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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